

## **REMARKS**

This paper responds to the Official Action of September 10, 2009 on remand from the Board of Patent Appeals and Interferences ("the Board") to address some technical issues in the case. Claims 1-87 are pending and stand rejected. Amendments have been made to the form of two of the claims, but no substantive changes have been made. Also submitted herewith is another Supplemental Reissue Declaration of the inventors.

By way of background, this application is a reissue which has been pending now for over nine years, all while the life of the underlying patent is running. Applicants took one appeal to the Board, which led to a decision in January 2005. Further prosecution was undertaken to resolve the rejections upheld by the Board, but those efforts were rebuffed by Examiner. Applicants filed a second appeal to the Board on July 31, 2006 ("Second Appeal"). After the matter was fully briefed for the Second Appeal, rather than take the case up on the merits, the Board issued an Order returning the case to the Examiner in view of some technical deficiencies in the way the reissue claims were presented for amendment and in the declaration. Order mailed March 17, 2009.

Examiner finally issued the present Official Action six months later, in which Examiner (a) objected to the claims for failure to comply with the formatting requirements of 37 CFR 1.173; (b) rejected the claims under 35 USC 251 due to an allegedly defective declaration; and (c) reiterated the rejections of the claims over the prior art from the Official Action from which the second appeal had been taken.

Items (a) and (b) were premised on the Board's Order in the Second Appeal, whereas item (c) is understood to have been undertaken to maintain the rejections for purposes of return to appeal once the other items are resolved. This Response primarily addresses those items (a) and (b) so that the case may be returned to the appeal and addressed on the merits. In any

event, as regards item (c), the substantive rejections of the claims over the prior art, rather than restate all of the arguments thereagainst, Applicants incorporate by reference in their entireties both their Appeal Brief and Reply Brief filed in the Second Appeal.

Turning now to the other items, we address them in order. Before doing so, however, Applicants wish to thank Examiner Juska and Supervisory Examiner Tarazano for the courtesies they extended in telephonic discussions with undersigned counsel's Associate, Dr. Tim Ardizzone, in order to aid undersigned counsel in addressing some procedural issues. There were three discussions on October 28, 2009, November 3, 2009, and November 16, 2009.

In the October 28, 2009 discussion, Supervisory Examiner Tarazano acknowledged that Dr. Ardizzone was not registered to practice before the United Patent and Trademark Office but that the discussion was nonetheless appropriate because Dr. Ardizzone was only requesting procedural clarification to assist undersigned counsel. In response to Dr. Ardizzone's query, Supervisory Examiner Tarazano suggested that Applicants respond to the Official Action with a properly executed supplementary reissue declaration and a new listing of claims amended in compliance with 37 CFR 1.173. Supervisory Examiner Tarazano also suggested that Applicants request an interview with Examiner Juska after responding to the Official Action to confirm that the supplementary reissue declaration is acceptable, and that the new listing of claims are properly formatted before reinitiating the appeal.

On November 3, 2009, Examiner Juska contacted Dr. Ardizzone and agreed with the Supervisory Examiner's suggested approach for responding to the Official Action.

On November 16, 2009, Dr. Ardizzone spoke with Supervisory Examiner Tarazano regarding the proper format for the supplementary reissue declaration. In that regard, the Official Action states that "the amendments filed May 3, 2005 and February 6, 2006, are not

accompanied by proper supplemental reissue declarations. Additionally, the declaration filed with the RCE of May 3, 2005, does not appear to be signed by all of the inventors." As shown by the record, the original declaration was signed by both inventors and that the declaration filed with the RCE of May 3, 2005 was only signed by one inventor to correct that inventor's citizenship. Supervisory Examiner Tarazano suggested that Applicants submit a supplementary reissue declaration including the correct citizenship information and signed by both inventors.

With respect to the claims (item (a) above), the objections arise because of the way dependent claims 11 and 22 were previously presented in amended form. In that regard, Applicants indicated the deletion of the words "spun yarn" in claims 11 and 22 by striking through the words. Newly amended claims 11 and 22 now indicate the deletion of these words by enclosing them in brackets.

Included hereinabove is an updated new listing of claims having status identifiers in compliance with 37 CFR 1.173. The present status identifiers indicate that all claims are pending and the number of times each claim was amended, e.g., "once amended" or "twice amended". In that regard, the status identifier for claims 11 and 22 state "pending – twice amended" to reflect the present corrective format of the amendments. No substantive change to any of the claims has been made.

Applicants respectfully submit that the amended claims now thus comply with 37 CFR 1.173 and withdrawal of the objections is thus in order. Prompt notification to that effect is respectfully solicited.

Turning to the declaration (item (b) above), Applicants submit herewith a Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement signed by both inventors to, as suggested by Supervisory Examiner Tarazano, identify their

respective countries of citizenship. In view thereof, withdrawal of the rejections under section 251 are also respectfully solicited.

## **CONCLUSION**

In view of the foregoing, Applicants submit that the issues raised in the latest Official Action have been addressed and that at least the amendment format and declaration issues have been resolved. While Applicants also submit the substantive rejections of the claims over the prior art are in error for reasons previously given such that this case is in condition for Allowance, Examiner is asked to at least enter this amendment to resolve the issues which caused the Board to return the case from the Second Appeal, and to advise undersigned counsel that those issues are now resolved, in order that an appeal may be reinstated without further delay (which has already cost more than half the life of the underlying patent since this application was first filed).

If Examiner believes any detailed language of the claims requires further discussion, or any other issues remain open, Examiner is respectfully asked to telephone undersigned counsel so that efforts may be undertaken aimed at promptly resolving same.

The fee for a one month extension of time is being submitted concurrently herewith. No other fee is considered due for this paper. If any other fee is deemed due, consider this as an authorization to charge Deposit Account 23-3000 therefor.

Respectfully submitted,  
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